

THOMAS J. ZRAIK

ATTORNEY AT LAW

2524 SECOR ROAD
P.O. Box 2627
TOLEDO, OHIO 43606

BY:.....

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E-MAIL: zraiklaw@bex.net

October 6, 2008

Superintendent James Gunner
Perkins Local School District
3700 South Avenue
Sandusky, Ohio 44870



Re: Carol Smith Disciplinary Issues and Request for Reasonable Accommodation

Dear Mr. Gunner:

Please be informed that Mrs. Carol Smith has retained me to represent her, *inter alia*, in the forthcoming disciplinary meeting with you recommended by school officials at a disciplinary conference with Principal Stephen Finn on October 2, 2008. According to Mrs. Smith, and the allegations included in the Notice from Principal Finn of the October 2, 2008 hearing, she is being accused of sleeping on the job and putting children at risk. See Notice, attached hereto, specifying four dates when Mrs. Smith was allegedly observed sleeping.

As you know, Mrs. Smith is diagnosed with Diabetes and, as such, her blood sugar levels are extremely difficult to control. In fact, she has asked her treating physician to write a letter on her behalf informing school officials of her diagnosis and the potential effects of her Diabetes, and this letter should already be in Mrs. Smith's personnel file. While Mrs. Smith strenuously denies ever putting any of her students at risk, she acknowledges that on one occasion, September 22, 2008, she did fall asleep due to a drop in her blood sugar level. On that occasion, however, Mrs. Smith was alone and, as there were no children in the choir room at the time, no children were put at risk.

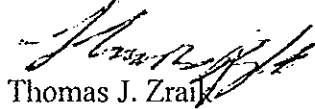
In light of these facts and on behalf of Mrs. Smith, I am officially requesting that you work together with Mrs. Smith to develop a reasonable accommodation to address this situation. As you know, reasonable accommodations must be provided whenever a qualified individual with a disability needs and requests one in order to prevent discrimination.

In light of Mr. Finn's September 29, 2008 Notice indicating that disciplinary action up to and including termination may be taken, Mrs. Smith is specifically requesting that she be provided with a reasonable accommodation to address the effects of her Diabetes while on the job. Moreover, rather than inappropriately imposing disciplinary measures, I am also requesting that you take measures to ensure a plan is developed among school officials, Mrs. Smith, and Mrs. Smith's physician that will satisfy the District's legitimate

interests as well as addressing Mrs. Smith's needs. Finally, I ask that you provide me with adequate notice in the event you decide to schedule a meeting for Mrs. Smith with you or your designee, as recommended by Mr. Finn, so that I may represent her at that meeting.

If you have any questions, please do not hesitate to contact my office. Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Zraik", written over the printed name.

Thomas J. Zraik

cc: Mrs. Carol Smith

Enclosure: September 29, 2008 letter by Principal Finn

THOMAS J. ZRAIK

ATTORNEY AT LAW

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October 14, 2008

Stephen P. Finn, Principal,
Briar Middle School
3700 South Avenue
Sandusky, Ohio 44870

Re: Carol Smith

REBUTTAL TO REPRIMAND

Dear Principal Finn:

This letter is a response and rebuttal to your October 6, 2008 "reprimand" of Carol Smith, wherein you determined that my client is guilty of "unprofessional" conduct associated with "sleeping" during class periods.

As my client informed you at the time of your October 2, 2008 conference with her, she has been diagnosed with a disease, specifically "diabetes", which is not altogether controlled with medication at the present time. See letter, attached, from Certified Nurse Practitioner Michele Poulos, R.N., M.S.N., C.N.P., of Northern Ohio Medical Specialists Healthcare. When Mrs. Smith's blood sugar runs too high or too low her body reacts in a manner that can result in symptoms including lethargy, irritability, nausea, sweating, and mood changes. Mrs. Smith is aware of her condition and has consistently worked to control this disease. At times, particularly if she is experiencing elevated blood sugar, Mrs. Smith may appear to be sleeping even though she is awake and fully aware of her surroundings. At such times, she may require simple treatment such as eating a candy bar or, in the event of a more serious reaction, she could require medical attention. However, by working closely with her treating physician and constantly self-monitoring, Mrs. Smith's current medications have been reasonably effective in controlling her symptoms.

Please be advised that Mrs. Smith's diabetes has never prevented her from performing the essential functions of her job, nor has she ever placed any of her students at risk or in harms way as a result of her diabetic symptoms. While she may, at times, have appeared to be "sleeping", she has always been aware of what is going on in the classroom. In particular, Mrs. Smith expressly denies sleeping on the dates identified in your letter of reprimand, with the exception of the September 4, 2008 date. On that day, although she did sleep for approximately ten minutes, she was alone in the choir room at the time and


there were no students present. Thus, no students were left unsupervised. In fact, that situation is no different, for example, than you taking a power nap in the middle of the day. The only difference is that Mrs. Smith cannot close the door.

Instead of reprimanding my client for experiencing symptoms of a medical condition that is difficult to control, it would be far more beneficial to all concerned to provide an accommodation for her in the event her sugar becomes too high or too low. Specifically, if Mrs. Smith appears to be "sleeping" someone such as a teacher or administrator could simply ask if she is okay or if she needs a candy bar or juice. Sometimes, if her sugar is too low, she may need to take a break to inject herself with insulin. In a situation like that, Mrs. Smith may need an adult to take her place for five or ten minutes in order to go to a private place to inject herself. In addition, it would be extremely beneficial for you and your staff to obtain some minimal training on recognizing the signs of Diabetes and understanding its symptoms since to an uninformed person what appears to be drunkenness, sleeping, awkwardness or disorientation are in fact symptoms of uncontrolled blood sugar.

Furthermore, at this time and unless her medical condition becomes far more severe, Mrs. Smith does not require a medical leave. She is fully capable of performing all the essential functions of her job. What she does require, however, is to be provided with the relatively simple and reasonable type of accommodation suggested above. Any further disciplinary action arising out of or in response to knowledge of the symptoms associated with her disability will be considered harassment and/or retaliation.

Finally, please assure a copy of this rebuttal statement is included in Mrs. Smith's employment file and do not hesitate to contact my office if you have any questions. Your cooperation in this matter will be appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "Thomas J. Zraik", written in a cursive style.

Thomas J. Zraik

Cc:
Carol Smith
Superintendent James Gunner
John Gerber, PEA President



NORTHERN OHIO MEDICAL SPECIALISTS
HEALTHCARE

09/30/2008

Perkins Middle School
3700 South Avenue
Sandusky, Ohio 44870

To Whom It May Concern:

This letter is to inform you that Carol Smith has had diabetes for 16 years, which has been fairly well-controlled over the past several years. As you know, diabetics may experience high and low sugars, depending on food and insulin intake along with varying stress levels. When sugars are too high, she may become lethargic and disoriented and if too low, may sweat, shake and experience mood changes or irritability.

We continue to trial new doses and medications to improve Carol's diabetes. Please be aware that she may experience some of the above symptoms and will ultimately need seen or treated by us. Please be understanding of her medical diagnosis and condition. If you have any questions or concerns, feel free to call the office at 419-626-6891.

Yours Truly,

A handwritten signature in black ink that reads "Michele Poulos". The signature is written in a cursive, flowing style.

Michele Poulos RN, MSN, CNP

INTERNAL MEDICINE
2800-B Hayes Avenue, Sandusky, OH 44870 (419) 626-6891

RECEIVED

THOMAS J. ZRAIK

ATTORNEY AT LAW

BY:.....

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October 14, 2008

Superintendent James Gunner
Perkins Local School District
3700 South Avenue
Sandusky, Ohio 44870

Re: Request for Reasonable Accommodation on Behalf of Carol Smith

Dear Superintendent Gunner:

Pursuant to Title I of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and R.C. 4112.02(G) of the Ohio Revised Code, this letter is being sent on behalf of the above named individual, an employee of the Perkins Local School District and member of the Perkins Educational Association ("PEA") to request that the Perkins Local School District ("PLSD") provide Mrs. Smith, a person with a disability, with a reasonable accommodation in order to allow her to perform the essential functions of her duties as teacher in the PLSD.

As you are aware, Mrs. Smith has diabetes. This is a disease that negatively affects her body's ability to regulate insulin and, as a result, even with medication her blood sugar can on occasion range from abnormally low levels to abnormally high levels. See letter, attached, from Certified Nurse Practitioner Michele Poulos, R.N., M.S.N., C.N.P., of Northern Ohio Medical Specialists Healthcare. Occasionally, albeit not frequently, when Mrs. Smith's blood sugar goes beyond normal ranges, she may experience symptoms such as lethargy and disorientation; while if her blood sugar drops too low, she may experience sweating, nausea, irritability or mood swings. At times, particularly if she is experiencing elevated blood sugar, she may appear to be sleeping even though she is awake and fully aware of her surroundings.

As you know, Principal Stephen P. Finn of Briar Middle School has recently reprimanded Mrs. Smith based on allegations, which Mrs. Smith denies, that she has been observed "sleeping" on multiple occasions. See Rebuttal, attached. As a result, and in order to forestall further disciplinary action being taken based on symptoms and/or manifestations of her disability, Mrs. Smith is hereby requesting PLSD to provide a reasonable accommodation such as that outlined below, to wit:

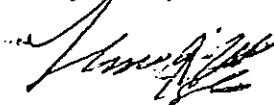
REASONABLE ACCOMMODATION

1. All staff and administrators of PLSD who work directly or in association with Mrs. Smith will become familiar with and trained in recognizing symptoms of diabetes and, when necessary, providing minimal treatment as outlined below.
2. If an individual observes or is informed that Mrs. Smith appears to be asleep, the individual should approach and quietly ask Mrs. Smith if she is in need of assistance.
3. If she responds, ask what she needs or offer to provide her with a drink of water, a candy bar, or juice to help adjust blood sugar.
4. If Mrs. Smith does not respond, repeat step # 2 and, if no further response is made, seek immediate medical assistance by calling 911.
5. If at any time Mrs. Smith is in need of insulin, she may request and will be provided a five to ten minute break in order to inject herself with her insulin medication in privacy.

Please understand these are suggested accommodations and not set in stone. However, in the event you believe these proposed accommodations are not acceptable, we do request that you initiate further negotiation with Mrs. Smith through this office and with her medical providers in order to develop reasonable accommodations satisfactory to all parties concerned.

Please do not hesitate to contact me if you have any questions regarding this matter. Your cooperation is appreciated.

Respectfully,



Thomas J. Zraik

Cc: Mrs. Carol Smith
Enclosure

Perkins Public Schools

Our mission: Perkins Schools....an exceptional education
in a safe, caring environment.

Jim Gunner, Superintendent

Lisa M. Crescimano, Treasurer



October 17, 2008

Mrs. Carol Smith
217 Michigan Avenue
Sandusky, Ohio 44870

Dear Mrs. Smith:

I request your presence at a meeting on Thursday, October 23, 2008 at 4:00 p.m. in my office at the Administrative Service Center. This meeting will be held to discuss the claim of your attorney, Mr. Thomas J. Zraik, that you require "reasonable accommodation" for a disability related to your medical diagnosis of diabetes.

As the medical documentation provided by Northern Ohio Medical Specialists, at your request, indicates your diabetes "has been fairly well-controlled over the past several years" and there was no mention of a disability due to your diabetes prior to the disciplinary conference held on October 2nd I am at a loss to understand your sudden claim of a disability.

Please be prepared to provide the following information to the school district during the requested meeting:

1. What aspect of your job can you NOT do as a result of your claimed disability?
2. What reasonable accommodations are you requesting to perform the above described job duties that you are currently unable to perform?

I would welcome Mr. Zraik to attend this meeting as your representative. Should you have any questions regarding this request, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Gunner", is written over a horizontal line.

James P. Gunner
Superintendent

Xc: Mr. Stephen Finn, Briar Middle School Principal
Mr. John Gerber, PEA President
Mr. Thomas J. Zraik, Attorney at Law
Mr. Chris Williams, Attorney at Law

Perkins Public Schools

Our mission: Perkins Schools....an exceptional education
in a safe, caring environment.



Jim Gunner, Superintendent

Lisa M. Crescimano, Treasurer

November 18, 2008

Mrs. Carol Smith
Briar Middle School

Dear Mrs. Smith:

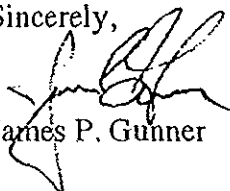
This letter is a follow up to our meeting held on Thursday, October 23rd regarding your request for accommodations with your job because of ongoing diabetes care. In the meeting, I agreed to the following accommodations as requested:

Job Accommodations for Mrs. Carol Smith

- Mrs. Smith will be permitted to ask for classroom coverage when it is necessary to perform an insulin injection. Insulin injections may be given in the nurse's office to maintain privacy. Mrs. Smith should call the office and ask for a school administrator to cover her class during this time period.
- If Mrs. Smith is having a medical reaction to either a low or high blood sugar, class coverage will be provided until Mrs. Smith feels her blood sugar is under control. She simply needs to call the office and ask for assistance.
- Mrs. Smith is permitted to conduct blood glucose tests as necessary to monitor her blood glucose level. The school nurse will conduct an informational session with all of Mrs. Smith's students about diabetes, insulin control, and glucose monitoring to minimize student curiosity in the future.
- Mrs. Smith is permitted to have snacks within her classroom to assist in adjusting for low blood sugar reactions.
- General information on diabetes will be shared with all staff to increase awareness of the disease, warning signs, and typical symptoms of low and high blood sugar levels.

It was emphasized during the meeting that reasonable accommodations such as those listed above would be taken by the school district to assist Mrs. Smith in her diabetic care while teaching. Through these accommodations it was thought that further episodes of disorientation, sleepiness, or verbal outbursts towards students during the supervision of her classes could be avoided. Any further episodes of disorientation, sleepiness or verbal outbursts directed at students on Mrs. Smith's part that impedes her ability to be alert, in charge of her classroom, and respectful of students would be treated as grounds for disciplinary action, or placement on a medical leave of absence to assist in overall better control of her diabetes.

Sincerely,



James P. Gunner

XC: Personnel File, Stephen Finn, Principal
Thomas J. Zraik, Attorney at Law